

October 6, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0401101**

DOUGLAS DALE AND LINDA PAYTON
Code Enforcement Appeal

Location: 19222 – 238th Avenue Northeast

Appellant: **Douglas Dale and Linda Payton**
19222 – 238th Avenue Northeast
Woodinville, Washington 98077
Telephone: (206) 490-1362

King County: Department of Development and Environmental Services
represented by **Erroll Garnett**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7102
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal; extend dates of compliance
Examiner's Decision:	Deny appeal; extend dates of compliance

EXAMINER PROCEEDINGS:

Prehearing Conference:	June 8, 2005
Hearing Opened:	July 7, 2005
Hearing Closed:	July 7, 2005
Hearing Reopened ¹ :	September 21, 2005
Hearing Closed:	September 21, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

¹ See Hearing Examiner Order of August 18, 2005.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On April 8, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Douglas Dale that alleged code violations at a 3.82-acre, RA-5 zoned property located at 19222 – 238th Avenue Northeast. The Notice and Order cited Mr. Dale and the property for violations by residentially occupying two substandard dwellings (consisting of recreational vehicles (RV), one of which is a “5th-wheeler” travel trailer and the other of which is another type of RV); placement of a commercial cargo container without the required permits, inspections and approvals; and accumulation of assorted rubbish, salvage and debris. The Notice and Order required that the substandard dwelling units be vacated by April 25, 2005 and removed from the property by May 9, 2005. Also by May 9, 2005, the cargo container and the rubbish, salvage and debris were required to be removed.
2. Linda Payton and Douglas Dale filed a timely appeal of the Notice and Order. The essential issues raised in the appeal are that some of DDES’s evidence was obtained improperly by trespassing on the property;² residential occupancy of a travel trailer was legally permitted in 1993 when the Appellants purchased the property; and the Appellants have gotten conflicting and confusing information from DDES regarding the means by which they could legitimize the retention of the cargo container on the property. The remaining two charges in the Notice and Order had been resolved by compliance by the time the initial hearing session commenced: the occupancy of the second RV, and the cleanup of the accumulated rubbish, salvage and debris.
3. In order to be granted the required building permit for the cargo container to remain on the property, the container must be reviewed for compliance with the building code. DDES’s review will require submittal of the manufacturer’s detailed specifications of materials and fabrication.
4. The Appellants stipulated in their testimony that they are residing in the travel trailer on the subject property pending their intended construction of a permanent residence onsite. Occupancy of a travel trailer as a full-time residence is not permitted under King County code: A recreational vehicle by definition is not a dwelling unit. [KCC 21A.06.345 *et. seq.*, and KCC 21A.06.960] Dwelling units, including factory-built housing and mobile homes, are permitted in the RA-5 zone; recreational vehicles occupied as a fully residential use such as in this case, in other words in an attempted dwelling-type use, are not permitted in the RA-5 zone. [KCC 21A.08.030]³ Nevertheless, DDES apparently has informally permitted the residential occupancy of travel trailers on a temporary basis during construction of a permanent residence on a property, but only if a valid building permit has been obtained for the new residence and if the travel trailer is hooked up to an approved legal domestic water supply and an approved means of sewage disposal. [KCC 21A.28.020]

² The Appellants specifically object to the admission of Exhibit 7, contending that it was illegally obtained by trespass. The Examiner overrules the objection, finding that it was obtained by DDES from public King County Sheriff’s Office (KCSO) records, and consists of an incident report recorded in due investigation of a possible crime which necessitated a legitimate KCSO visit to the subject property. Exhibit 7 is admitted. The document originally offered by DDES as Exhibit 11 was not admitted by the Examiner due to irrelevance. A different document was later admitted and numbered Exhibit 11.

³ Recreational, seasonal and vacation use of recreational vehicles is also subject to other land use limitations. See, *e.g.*, KCC 21A.06.960 and 21A.08.040.

5. The Appellants have not obtained a building permit to construct a permanent residence onsite, and the travel trailer is not hooked up to an approved domestic water source nor is it hooked up to an approved means of sewage disposal. It is served by a water tank (filled at least at times with water from a nearby community well of disputed legality and usage rights), and a sewage holding tank that is pumped periodically.
6. The Appellants assert a number of claims regarding their inability to obtain a building permit, including complaints about problems with disputed legal access and disputed water well use rights, and claims of improper actions by King County and others with respect to the access and water source issues, but these contentions are not directly relevant to the charge of illegal residential occupancy of the travel trailer.
7. A septic system approval was at one time granted for the subject property for a residence, but has since expired since a building permit was not timely obtained.
8. It appears from the record that the Appellants “bet on the come” and prematurely started their residential occupancy of the travel trailer out of the proper sequence of the permits and approvals required even under DDES’s informal allowance of conditional travel trailer occupancy during valid permanent residence construction. But the causes and problems associated with those missteps, such as disputes over access and water rights, cannot influence the Examiner’s decision on the Notice and Order appeal, since it is still the Appellants’ ultimate responsibility that at the very least they took premature occupancy before the required approvals were in place.
9. The Appellants complain about unfair County enforcement, and improper tactics and behavior. They allege that the County is unfairly enforcing their occupancy case when there are other travel trailers being similarly occupied in the area, and also is ignoring the fact that other parties are using the allegedly illegal water well at issue. They also note that DDES itself maintains cargo containers at its office complex.⁴ These are matters of legal equity, over which the Examiner has no jurisdiction (see Conclusion 1), or are matters under DDES administrative authority and responsibility.
10. The Appellants’ complaints about problems with prior County abatement of violations on the property are not relevant to consideration of this particular Notice and Order and its appeal.
11. The Appellants claim that by virtue of their purchase of the property in 1993 they have a vested right to 1993 development regulations, and that residential occupancy of the travel trailer is permitted by those regulations. These claims fail on two accounts: First, the Appellants have made no showing of any legal authorities which hold that vested development rights are established merely upon purchase of a property. The Examiner is unaware of any Washington vested rights law which makes any such rulings. Second, the Appellants have made no showing that the regulations in 1993 (or for that matter, during whichever year the travel trailer was placed on the property, which fact is not clear in the record⁵) would have permitted the type of residential occupancy of a travel trailer at issue in this Notice and Order proceeding.⁶

⁴ Presumably, since the offices are located within the City of Renton, those issues are subject to City of Renton regulations.

⁵ DDES testified at the July 7, 2005 hearing session that the violation at that time was a year-plus in duration.

⁶ The vested rights question would also still be open to the issues of application filings, permits, lawful establishment, etc.

12. The Appellants also claim that City of Redmond development regulations would permit their occupancy of the travel trailer. The claim has no relevance in the proceeding at hand. The subject property does not lie within the Redmond city limits and City of Redmond development regulations have no legal applicability to this property.
13. The preponderance of the evidence in the record supports a finding that the charges of code violation in the Notice and Order which remain at issue (after the pre-hearing resolution of the second RV and the accumulation of rubbish, salvage and debris) are correct and they are found correct. The residential occupancy of the travel trailer and the placement of the cargo container onsite are in violation of county code.

CONCLUSIONS:

1. The Appellants' argument that it is unfair for the County to engage in code enforcement on the subject property when other properties have similar violations is an equity issue over which the Examiner has no authority. It is tantamount to a claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unequal treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.
2. As the residential occupancy of the travel trailer and the placement of the cargo container on the property have been conducted in violation of county code as cited, those violation charges of the Notice and Order are correct and are sustained on appeal.
3. Since the issues of the second RV and the accumulation of rubbish, salvage and debris have been resolved, those charges shall be dismissed.
4. As the deadlines for compliance have been obviated by the time taken on appeal, the Examiner shall impose new deadlines for correction generally based on the recommendations of DDES.

DECISION:

The appeal is DENIED with respect to the residential occupancy of the travel trailer and the placement of the cargo container, except that the Notice and Order deadlines for regulatory compliance are revised as stated in the following order. The violation charges regarding the second recreational vehicle and the accumulation of rubbish, salvage and debris are DISMISSED as resolved.

ORDER:

1. Vacate the residentially-occupied travel trailer by *no later than* **November 30, 2005** and remove it from the property by *no later than* **December 14, 2005**.

2. Remove the non-permitted cargo container from the property by *no later than* **December 14, 2005**. As an alternative to removal of the non-permitted cargo container from the site, the Appellants may submit a *complete* application (including submittal of the pertinent original manufacturer's detailed specifications of materials and fabrication) by *no later than* **December 14, 2005** for an Already Built Construction (ABC) permit or whatever permit is applicable for its retention. Any and all deadlines for DDES-requested information to process the permit and obtainment of the permit shall be complied with.
3. No penalties shall be assessed against the Appellants and the property if all the deadlines stated within the above conditions 1 and 2 above are met. If any of the deadlines are not met, DDES may impose penalties against the Appellants and the property retroactive to the date of this order.

ORDERED this 6th day of October, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 6th day of October, 2005, via certified mail to the following:

Douglas Dale and Linda Payton
19222 – 238th Avenue Northeast
Woodinville, Washington 98077

TRANSMITTED this 6th day of October, 2005, to the following parties and interested persons of record:

Jeremy Coleman
c/o D. Dale & L. Payton
19222 - 238th Ave. NE
Woodinville WA 98072

Douglas Dale & Linda Payton
19222 - 238th Avenue NE
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Jeri Breazeal
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 7, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0401101

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Erroll Garnett, representing the Department; Appellants Douglas Dale and Linda Payton, and Jeremy Coleman.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES report to the hearing examiner dated June 8, 2005
- Exhibit No. 2 Copy of Notice and Order issued April 8, 2005
- Exhibit No. 3 Copy of Notice and Statement of Appeal, 3/24/05 and 4/26/05 letters with fax cover sheet dated May 4, 2005
- Exhibit No. 4 Copies of codes cited in the Notice and Order
- Exhibit No. 5 Copy of violation letter sent December 10, 2004
- Exhibit No. 6 Do not occupy notice posted March 14, 2005
- Exhibit No. 7 Copy of King County Sheriff's incident report, submitted 3/26/05
- Exhibit No. 8 Do not occupy notice posted 4/11/05
- Exhibit No. 9 Photographs (color copies, 10 pages [A-J]) of subject property taken 3/14/05
- Exhibit No. 10 Photographs (color copies, 1 page) of subject property taken 4/11/05
- Exhibit No. 11 Printout re: City of Redmond temporary uses codes
- Exhibit No. 12 Photographs (color originals, 1 panoramic and on standard) of neighboring property
- Exhibit No. 13 Modification of Water Well Easement Agreement, dated October 8, 1998
- Exhibit No. 14 Letter from Seattle & King County Public Health dated February 2, 2000, with attachments (2)
- Exhibit No. 15 Seattle-King County Department of Public Health site application for onsite sewage disposal system no. H9630007, approved 12/06/96
- Exhibit No. 16 Survey invoices from Mead Gilman & Associates dated 4/29/1997 and 3/28/1997